Western Australia

Criminal Law (Mental Impairment) Act 2023

Criminal Law (Mental Impairment) Regulations 2024

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Criminal Law (Mental Impairment) Regulations 2024

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Defined terms

Criminal Law (Mental Impairment) Regulations 2024

1. Citation

These regulations are the *Criminal Law (Mental Impairment) Regulations 2024*.

2. Commencement

These regulations come into operation on 1 September 2024.

3. Terms used

In these regulations —

CEO (Community Services) means the chief executive officer of the Community Services Department;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

community corrections centre means a place declared to be a community corrections centre under the *Sentence Administration Act 2003* section 84(1);

DPP means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991* or any person performing the functions of, or acting in, that office;

ECMS means the electronic case management system for the management of proceedings in Western Australian courts and tribunals;

pre-disposition report means a report submitted to a court under section 47(4) of the Act.

4. Communication partners (Act s. 21)

(1) For the purposes of section 21 of the Act, a court or the Tribunal may appoint a communication partner —

(a) on its own initiative; or

(b) on application by any of the following —

(i) the accused or supervised person who is the subject of the proceedings;

(ii) the representative of the accused or supervised person;

(iii) a legal practitioner representing the accused or supervised person;

(iv) the DPP;

(v) a police officer.

(2) A court or the Tribunal may hold a hearing (a ***ground rules hearing***) for the purposes of making any necessary orders relating to either or both of the following —

(a) the communication and support needs of the accused or supervised person;

(b) the communication partner.

(3) The communication partner must attend the ground rules hearing unless the court or Tribunal orders otherwise.

5. Information to be included in reports about person's mental state (Act s. 23(d))

For the purposes of section 23(d) of the Act, the information is —

(a) the nature of the risk (if any) that the accused or supervised person presents to themself or the community; and

(b) the qualifications and expertise of the person preparing the report.

6. Information to be given to Chief Mental Health Advocate if proceedings adjourned (Act s. 30 and 36)

(1) For the purposes of sections 30 and 36 of the Act, the following information in relation to the accused is the information that must be given to the Chief Mental Health Advocate —

(a) full name and title (for example, Mr, Mrs, Ms, Mx);

(b) contact details;

(c) date of birth;

(d) gender;

(e) ethnicity;

(f) language;

(g) disability (if any);

(h) if the accused is a child —

(i) the name and contact details of the child's parent or guardian; and

(ii) whether the child is under the care of the CEO (Community Services);

(i) current charges against the accused;

(j) whether the accused has been granted bail and, if so, the conditions of bail;

(k) the date of the next hearing.

(2) Subregulation (1) does not include information that is not known to the court when the court gives notice under section 30 or 36 of the Act (as the case requires).

7. Information to be given to Tribunal and Chief Mental Health Advocate after order made (Act s. 48(b))

(1) For the purposes of section 48(b) of the Act, the following information in relation to the supervised person subject to the

custody order or community supervision order is the information that must be given to the Tribunal —

(a) the prosecution notice or indictment relating to the supervised person;

(b) the supervised person's criminal record (if tendered to the court);

(c) any pre-disposition report relating to the supervised person;

(d) any other report referred to in section 23 of the Act considered by the court when making the custody order or community supervision order;

(e) the written reasons (if any) for making the custody order or community supervision order;

(f) if the supervised person is a child —

(i) the name and contact details of the child's parent or guardian; and

(ii) whether the child is under the care of the CEO (Community Services).

(2) For the purposes of section 48(b) of the Act, the following information in relation to the supervised person subject to the custody order or community supervision order is the information that must be given to the Chief Mental Health Advocate —

(a) full name and title (for example, Mr, Mrs, Ms, Mx);

(b) contact details;

(c) date of birth;

(d) gender;

(e) ethnicity;

(f) language;

(g) disability (if any);

(h) if the supervised person has a guardian, the following details —

(i) whether the guardian is the Public Advocate;

(ii) if the guardian is not the Public Advocate — the name and contact details of the guardian;

(i) if the supervised person has an administrator, the following details —

(i) whether the administrator is the Public Trustee as defined in the *Public Trustee Act 1941* section 2;

(ii) if the administrator is not the Public Trustee — the name and contact details of the administrator;

(j) if the supervised person is a child —

(i) the name and contact details of the child's parent or guardian; and

(ii) whether the child is under the care of the CEO (Community Services);

(k) the written reasons (if any) for making the custody order or community supervision order.

(3) Subregulation (2) does not include information that is not known to the court when the court gives notice to the Chief Mental Health Advocate under section 48(a) of the Act.

8. Copy of order and reasons for decision to be given to certain persons (Act s. 76(2))

(1) In this regulation —

(a) each of the following terms has the meaning given in the *Mental Health Act 2014* section 4 —

patient

treating psychiatrist

(b) each of the following terms has the meaning given in the *Mental Health Act 2014* section 113 —

community treatment order

supervising psychiatrist

treating practitioner

(2) For the purposes of section 76(2) of the Act, the following persons are prescribed in relation to an order made under section 73 of the Act —

(a) the Commissioner of Police;

(b) the Chief Mental Health Advocate;

(c) the CEO;

(d) the CEO (Corrections);

(e) if the supervised person is a child — the CEO (Young Offenders);

(f) if the order is made in relation to a custody order and the supervised person is detained in a DSC declared place — the chief executive officer of the Disability Services Commission;

(g) if the supervised person is a patient —

(i) the Chief Psychiatrist; and

(ii) the person's treating psychiatrist;

(h) if the supervised person is under a community treatment order —

(i) the person's supervising psychiatrist; and

(ii) the person's treating practitioner.

9. Persons to notify Tribunal of breach of leave of absence order condition (Act s. 80(1)(b))

Each of the following is a class of person for the purposes of section 80(1)(b) of the Act —

(a) police officer;

(b) director or manager of a DSC declared place.

10. Persons to notify Tribunal of breach of CSO condition (Act s. 87(1)(b))

Each of the following is a class of person for the purposes of section 87(1)(b) of the Act —

(a) police officer;

(b) health professional.

11. Tribunal to give details after making application to court due to suspected breach of CSO condition (Act s. 88(4))

For the purposes of section 88(4) of the Act, the details that the Tribunal must give are as follows —

(a) details of the suspected breach;

(b) the date on which the order was reviewed under section 88(2) of the Act;

(c) the information considered by the Tribunal when deciding to review the order;

(d) the information considered by the Tribunal when forming a reasonable suspicion that there is a significant risk to the health or safety of a person for the purposes of section 88(3)(a) of the Act;

(e) if the Tribunal issued a warrant under section 88(5) of the Act — the information considered by the Tribunal when deciding to issue the warrant.

12. Court to give information after making interim or extended order or CSO under Part 7 of Act (Act s. 122(b))

For the purposes of section 122(b) of the Act, the information that must be given to the Tribunal is —

(a) any report referred to in section 23 of the Act considered by the court when making the interim or extended order or community supervision order; and

(b) the written reasons (if any) for making the interim or extended order or community supervision order.

13. Disclosing information to victims (Act s. 153)

(1) For the purposes of section 153 of the Act, the following kinds of information are prescribed in relation to a supervised person subject to a custody order —

(a) the limiting term for the custody order;

(b) details of any change to the custody order resulting from a review or appeal;

(c) the region, city, town or suburb in which the supervised person is detained while subject to the custody order;

(d) details of any leave of absence order applying to the supervised person, including the region, city, town or suburb in which the supervised person is to reside while subject to the leave of absence order;

(e) the details of any escape from custody by the supervised person and any subsequent recapture of the supervised person;

(f) notification of the death, or entry into hospice care, of the supervised person;

(g) a description of any treatment program in which the supervised person participates while in custody;

(h) a photograph of the supervised person.

(2) For the purposes of section 153 of the Act, the following kinds of information are prescribed in relation to a supervised person subject to a community supervision order —

(a) details of the community supervision order;

(b) details of any change to the community supervision order resulting from a review or appeal;

(c) the region, city, town or suburb in which the community corrections centre that the supervised person reports to is located;

(d) the region, city, town or suburb in which the supervised person is to reside while subject to the community supervision order;

(e) notification of the death, or entry into hospice care, of the supervised person;

(f) a description of any treatment program in which the supervised person participates;

(g) a photograph of the supervised person.

(3) Before disclosing information set out in subregulation (1) or (2) in relation to a supervised person who is a child, the CEO must take into account the child-specific considerations set out in section 10(a) and (f) of the Act.

(4) The disclosure of a photograph of a supervised person is subject to the condition that a copy of the photograph must not be given.

14. Tribunal to notify Public Advocate of certain information (Act s. 190(1)(a))

For the purposes of section 190(1)(a) of the Act, the following information in relation to the supervised person subject to the custody order, community supervision order or interim disposition is the information that must be given to the Public Advocate —

(a) full name and title (for example, Mr, Mrs, Ms, Mx);

(b) contact details;

(c) date of birth;

(d) gender;

(e) ethnicity;

(f) language;

(g) disability (if any);

(h) next of kin;

(i) a copy of the custody order, community supervision order or interim disposition;

(j) any pre-disposition report relating to the supervised person;

(k) any other report referred to in section 23 of the Act considered by the court when making the custody order, community supervision order or interim disposition;

(l) the written reasons (if any) for making the custody order, community supervision order or interim disposition.

15. Authentication of orders (Act s. 194)

For the purposes of section 194 of the Act, an order of the Tribunal is authenticated if it is —

(a) signed by a member of the Tribunal; or

(b) signed by the Registrar of the Tribunal; or

(c) signed by a member of staff of the Tribunal and has the seal of the Tribunal affixed to it; or

(d) recorded in the ECMS and confirmed by an entry made into the ECMS by —

(i) a member of the Tribunal; or

(ii) the Registrar of the Tribunal; or

(iii) a member of staff of the Tribunal.

16. Place of custody to be disclosed to Chief Mental Health Advocate on request

The CEO must, within 48 hours of a request by the Chief Mental Health Advocate, provide the Chief Mental Health Advocate with the name of the place of custody of an accused or supervised person.

17. Transcript of proceedings or reasons to be provided to Tribunal

(1) If a court makes a supervision order it must provide to the Tribunal a full transcript of the proceedings in which the order was made.

(2) The court must provide the transcript as soon as practicable after the transcript becomes available.

(3) However, if the transcript is not able to be provided and the Tribunal has not been provided with written reasons for the order, the court must, as soon as reasonably practicable —

(a) provide the written reasons; or

(b) provide a written summary of the reasons prepared by the judicial officer who made the order.

18. Transcript of proceedings or reasons to be provided to Chief Mental Health Advocate on request

(1) The Chief Mental Health Advocate may request a full transcript of the proceedings in which any of the following orders was made from the court that made the order —

(a) an order under section 29(3)(c) of the Act to adjourn proceedings;

(b) an order under section 35(2) of the Act to adjourn proceedings;

(c) a custody order;

(d) a community supervision order.

(2) The court must provide the transcript, if it is available, to the Chief Mental Health Advocate as soon as reasonably practicable after receiving the request.

(3) However, if the transcript is not able to be provided and the Chief Mental Health Advocate has not been provided with

written reasons for the order, the court must, as soon as reasonably practicable —

(a) provide the written reasons; or

(b) provide a written summary of the reasons prepared by the judicial officer who made the order.

19. Transcript of proceedings or reasons to be provided to Public Advocate on request

(1) The Public Advocate may request from the Tribunal the information given to the Tribunal under regulation 17 relating to proceedings in which a supervision order was made.

(2) The Tribunal must provide the information to the Public Advocate as soon as practicable after receiving the request.

(3) Subregulation (1) does not apply if the accused or supervised person in respect of whom the order was made is a child.

20. Form of arrest warrant (Act s. 230(1)(a))

For the purposes of section 230(1)(a) of the Act, the prescribed form of an arrest warrant is set out in Schedule 1.

21. Tribunal to provide information to Chief Mental Health Advocate after commencement of Act (Act s. 276(1)(c))

(1) For the purposes of section 276(1)(c) of the Act, the information listed in regulation 6(1)(a) to (i) is prescribed.

(2) Subregulation (1) does not include information that is not known to the Tribunal when the Tribunal provides the details under section 276(1) of the Act.

Schedule 1 — Arrest warrant

[r. 20]

<table>
<tr><td colspan="2">Western Australia
Criminal Law (Mental Impairment) Act 2023

[Specify court or Mental Impairment Review Tribunal]</td><td colspan="3">Arrest warrant for a supervised person
Warrant No.</td></tr>
<tr><td>To</td><td colspan="4">All police officers.
All persons authorised to exercise a power in the Court Security and Custodial Services Act 1999 Sch. 2 cl. 2.</td></tr>
<tr><td rowspan="6">Person to be arrested</td><td>Full name</td><td colspan="3"></td></tr>
<tr><td>Date of birth</td><td></td><td colspan="2">Male/Female/Other</td></tr>
<tr><td>Address</td><td colspan="3"></td></tr>
<tr><td>Type of disability (if any)</td><td colspan="3"></td></tr>
<tr><td colspan="2">Is the Public Advocate the guardian of the person?</td><td colspan="2">Yes/No</td></tr>
<tr><td colspan="2">If the person has a guardian other than the Public Advocate, provide contact details of guardian</td><td colspan="2"></td></tr>
<tr><td>Command</td><td colspan="4">This warrant authorises and commands you to arrest the above person and take the person to the place specified below.</td></tr>
<tr><td>Reason for issue of warrant</td><td colspan="4">Under the Criminal Law (Mental Impairment) Act 2023 —
☐ Leave of absence order cancelled by Tribunal under s. 73(1)(d)(i) or s. 81(3) (s. 82(1)).
☐ Person required to answer allegation of breach of community supervision order (s. 88(5)).
☐ Person failed to appear at hearing of application under s. 88 (s. 89(10)).
☐ Appeal against decision to release person (risk to community) (s. 94(2)).
Specify risk —
☐ Person required to appear before Tribunal (s. 184(2)).</td></tr>
</table>

<table>
<tr><td>Place where person is to be taken (e.g. court, Tribunal, hospital, prison, detention centre, declared place)</td><td colspan="4"></td></tr>
<tr><td rowspan="3">Offences for which CO or CSO imposed</td><td>Prosecution notice/ Indictment No.</td><td colspan="3">Description of offence</td></tr>
<tr><td></td><td colspan="3"></td></tr>
<tr><td></td><td colspan="3"></td></tr>
<tr><td>Warrant issued by</td><td colspan="2">Signature:

Judicial officer/[Title of officer]</td><td>Date</td><td></td></tr>
<tr><td>Execution details</td><td colspan="4">Person arrested on 20 at hours at
by: Registered No.:
of: Station:
Signature: Date:</td></tr>
</table>

Notes

This is a compilation of the *Criminal Law (Mental Impairment) Regulations 2024*. For provisions that have come into operation see the compilation table.

Compilation table

Citation	Published	Commencement
Criminal Law (Mental Impairment) Regulations 2024	SL 2024/178 21 Aug 2024	1 Sep 2024 (see r. 2)

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
CEO (Community Services)	3
Commissioner of Police	3
community corrections centre	3
community treatment order	8(1)
DPP	3
ECMS	3
ground rules hearing	4(2)
patient	8(1)
pre-disposition report	3
supervising psychiatrist	8(1)
treating practitioner	8(1)
treating psychiatrist	8(1)

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